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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,799	01/09/2002	Frank Leymann	DE920000043US1 (7161-183U)	5078
46320	7590	02/13/2006	EXAMINER	
CHRISTOPHER & WEISBERG, PA 200 E. LAS OLAS BLVD SUITE 2040 FT LAUDERDALE, FL 33301			GOLD, AVI M	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/042,799	LEYMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Avi Gold	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This action is responsive to the amendment filed on November 7, 2005. Claims 1, 6, 7, and 10 were amended. Claims 11-14 were added. Claims 1-14 are pending.

#### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg, U.S. Patent No. 6,247,141, further in view of Rizvi et al., U.S. Patent No. 6,490,610.

Holmberg teaches the invention substantially as claimed including fault tolerant server systems including redundant servers (see abstract).

As to claims 1, 7, and 11, Holmberg teaches a method of operating a computer system, wherein said computer system comprises at least one application client (15), at least two application servers (20, 21) which are suitable to process requests of the application clients (15), and a database (26) which may be accessible by the two application servers (20, 21), and wherein said method comprises the steps of recognizing that the first one of the two application servers (20, 21) fail, sending a

request of the application client (15) for the first application server (21) from the first application server (21) to the second application server (20) while the first one of the two application servers (20, 21) fails to access the database, processing the request by the second application server (20), and sending a response to the request from the second application server (20) to the first application server (21). (col. 3, lines 5-22, Holmberg discloses a primary server and a backup server, client applications with requests, and a backup server running if there is a problem with the primary server without the user knowing about the use of the backup server).

Holmberg fails to teach the limitation further including the failure to access a database.

However, Rizvi teaches a method and apparatus for implementing an automatic failover mechanism for clients accessing a resource through a server (see abstract). Rizvi teaches the use of an automatic failover system (col. 3, line 33 – col. 4, line 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg in view of Rizvi to use another server based on a failure to access a database. One would be motivated to do so because it would eliminate the burden of manually re-logging onto the database system whenever a database session failure occurs (col. 3, lines 37-39).

Regarding claims 2 and 12, Holmberg teaches the method of claims 1 and 11 comprising the further step of sending the response from the second application server

(20) to an input queue (24) of the first application server (21) (col. 6, lines 10-18, 29-40, Holmberg discloses a queue with the backup and primary servers).

Regarding claims 3 and 13, Holmberg teaches the method of claims 2 and 12 comprising the further step of putting, by the first application server (21), the response from the input queue (24) to an output queue (27) of the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claims 4 and 14, Holmberg teaches the method of claims 1 and 11 comprising the further step of sending the response from the second application server (20) to an output queue (27) of the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claim 5, Holmberg teaches the method of one of claims 3 or 4 comprising the further step of sending the response from the output queue (27) to the application client (15) (col. 3, lines 5-22, col. 6, lines 10-18, 29-40, Holmberg discloses a reply message sent to the client).

Regarding claim 6, Holmberg teaches the computer program or computer program product which is suitable to perform the method of one of claims 1 to 4 when it is loaded into a computer system (col. 1, lines 30-42, Holmberg discloses use of computer hardware).

Regarding claim 8, Holmberg teaches the computer system of claim 7 further comprising an input queue (24) corresponding to the first application server (21) (col. 6, lines 6, lines 28-40, Holmberg discloses a queue of requests in a primary server).

Regarding claim 9, Holmberg teaches the computer system of claim 7 or 8 further comprising an output queue (27) corresponding to the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claim 10, Holmberg teaches the computer system of one of claims 7 to 8 wherein the at least two application servers (20, 21) process request forms a number of application clients (14, 15, 16) (col. 3, lines 5-22).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,711,606 to Leymann et al.

U.S. Pat. No. 6,625,141 to Glitho et al.

U.S. Pat. No. 6,148,307 to Burdick et al.

U.S. Pat. No. 5,978,577 to Rierden et al.

U.S. Pat. No. 6,801,927 to Smith et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avi Gold whose telephone number is 571-272-4002. The examiner can normally be reached on M-F 8:00-5:30 (1st Friday Off).

Art Unit: 2157

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Avi Gold

Patent Examiner

Art Unit 2157

AMG

  
ARIO ETIENNE  
PRIMARY EXAMINER